

**Before the
Federal Communications Commission
Washington, D.C. 20554**

Rates for Interstate Inmate Calling Services

WC Docket No. 12-375

Pay Tel Communications, Inc.'s Petition
For Waiver of Interim Interstate ICS Rates

TO THE WIRELINE COMPETITION BUREAU:

PETITION TO EXPAND PAY TEL WAIVER

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Securus Technologies, Inc. (“Securus”), through counsel and pursuant to 47 C.F.R. § 1.3 and Paragraphs 82-84 of the *Inmate Rate Order*,¹ files this Petition regarding the Order released February 11, 2014, granting the petition of Pay Tel Communications, Inc. (“Pay Tel”) for a waiver of the Interim Rate Caps (“*Waiver Order*”).² Securus requests that the relief granted to Pay Tel be granted to all providers of Inmate Calling Services (“ICS”) operating in city and/or county jails located in the 13 states that Pay Tel serves.

BACKGROUND

As the Commission is aware, the *Inmate Rate Order* is presently under review at the U.S. Court of Appeals for the D.C. Circuit. On January 13, 2014, the D.C. Circuit stayed several portions of the order, including the “cost-based” rate requirement, Rule 64.6010, the “Safe Harbor” rates, Rule 64.6020, and the new annual reporting requirements, Rule 64.6060.³

On January 8, 2014, Pay Tel filed its Petition for Waiver of Interim Interstate ICS Rates, stating that “it cannot recover its costs on a holding company level if it is required to charge the Order’s interim interstate rates.”⁴ Specifically, Pay Tel stated that “the Order fails to preempt below-average-cost intrastate rate constraints, thereby leaving Pay Tel unable to recover its total-company costs[.]”⁵ The result, Pay Tel concluded, is that “Pay Tel [is] in an economically unsustainable situation.”⁶

¹ WC Docket No., 12-375, *Rates for Interstate Inmate Calling Services*, Report and Order, FCC 13-113, published at 78 Fed. Reg. 69756 (2013).

² WC Docket No. 12-375, Order, DA 14-187 (WCB Feb. 11, 2014).

³ *Securus v. FCC*, Nos. 13-1280, *et al.*, Order Granting in Part and Denying in Part Motions for Stay (D.C. Cir. Jan. 13, 2014) (“*Stay Order*”).

⁴ WC Docket No. 12-375, Pay Tel Communications, Inc. Petition for Waiver of Interim Interstate Rates at 1 (Jan. 8, 2014) (“Pay Tel Petition”).

⁵ *Id.* at 2.

⁶ *Id.*

Pay Tel joined the *Inmate Rate Order* appeal by Petition for Review dated January 9, 2104.

After the *Stay Order* was issued, Pay Tel submitted revised data that focused on what it termed an “intrastate shortfall” of \$1,666,412.⁷ Pay Tel emphasized that it has “demonstrated costs for prepaid collect calling and postpaid collect calling differ from the caps established by the Order.”⁸ In fact, Pay Tel stated, if the Commission “utilized” Pay Tel’s actual costs “in lieu of the Order’s rate caps, Pay Tel’s intrastate shortfall would be \$2,565,809.”⁹

On February 11, 2014, the Wireline Competition Bureau granted, in large part, Pay Tel’s request for waiver. It held that Pay Tel may charge up to \$0.46 per minute “for existing and new clients and may not charge interstate rates any greater than its rates as of February 10, 2014 if those rates were under \$0.46 per-minute.”¹⁰ The waiver was granted “for a period of nine months unless the Commission decides to take action on intrastate ICS rate caps sooner[.]”¹¹ Pay Tel was entitled to implement this \$0.46 rate on February 18, 2014.

DISCUSSION

The *Waiver Order* should apply to all ICS providers operating at jails in Pay Tel’s territory. All of those carriers are subject to the same “below-average-cost intrastate rate constraints” as Pay Tel, and they all face the same challenges in serving city and county jails.

⁷ WC Docket No. 12-375, Letter from Marcus Trathen, Counsel to Pay Tel, to FCC at 1 (Jan. 16, 2014) (redacted version).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Waiver Order* ¶ 20.

¹¹ *Id.* ¶ 21.

Moreover, all of those carriers compete with Pay Tel in its 13 states¹² and now have been significantly injured in their ability to compete for contracts and serve existing sites.

Perhaps the clearest evidence warranting the relief sought herein is that the Commission relied on Pay Tel's cost study when adopting the Interim Rate Caps¹³ – a fact of which Pay Tel is quite proud¹⁴ – and yet Pay Tel has successfully asserted that it cannot charge those very rate caps. This point bears repeating: the carrier on whose costs the Interim Rate Caps are based¹⁵ would be in an “economically unsustainable situation”¹⁶ if forced to comply with those rates.

For its part, Securus demonstrated that a rate of \$0.20 per minute (debit) and \$0.25 per minute (collect) – the Wright Petitioners' rates which were the subject of the proceeding – is too low. The expert report of Stephen E. Siwek, filed with the Securus Initial Comments in March 2013, shows in very clear terms that a great majority of Securus sites have

¹² Pay Tel did not request, and did not receive, relief for “new facilities added in three states (New Mexico, California and Maryland) after the second quarter of 2013.” *Waiver Order* n.25.

¹³ The non-confidential cost summary included in the filing reported actual and projected 2012-2015 average total costs for collect and debit per-minute calling of approximately \$0.23 and \$0.21, respectively, (including the cost of an advanced security feature known as continuous voice biometric identification).

Inmate Rate Order ¶ 27.

¹⁴ “The Commission relied heavily upon Pay Tel's cost study, particularly in adopting its interstate rate caps for debit calls, and even thanked Pay Tel for its cooperation and assistance.” Pay Tel Petition at 4.

¹⁵ The Bureau notes that “Pay Tel does not dispute that the cost study relied upon by the Commission continues to accurately represent its average costs of providing ICS service.” *Waiver Order* ¶ 11.

¹⁶ Pay Tel Petition at 2.

per-minute costs much higher than those rates. Siwek's full analysis¹⁷ revealed the following:

Table 2: ICS Costs per Minute			
Category	ICS Costs	Total Minutes	ICS Costs per Minute
High 10 Simple Average	\$ 1,759,901	10,068,670	\$ 0.1748
Medium 10 Simple Average	\$ 34,258	68,403	\$ 0.5008
Low 10 Simple Average	\$ 2,207	1,290	\$ 1.7106
State DOC Simple Average	\$ 4,605,001	43,083,108	\$ 0.1069

In fact, Pay Tel compared itself to Securus – more specifically, the Siwek Report – during the underlying proceeding in order to demonstrate how high its per-minute costs of service are.¹⁸ Pay Tel's Further Comments, filed July 17, 2013, include this table at page 7:

Call Volume Description	Calls per Year	Minutes per Year	Estimated Jail Size - Occupied Beds ²
Securus' High 10	281,011 - 1,186,473	6,134,884 - 26,119,012	1,171 to 4,944
Pay Tel's Average	48,105	513,082	203
Securus' Medium 10	4,702 - 8,088	67,105 - 69,859	20 - 34
Securus' Low 10 ³	113 - 284	885 - 1,668	1 - 5

Pay Tel went on to explain that "Pay Tel's cost per minute fits the Siwek Report's progression of call cost,"¹⁹ depicting that conclusion²⁰ with this chart:²¹

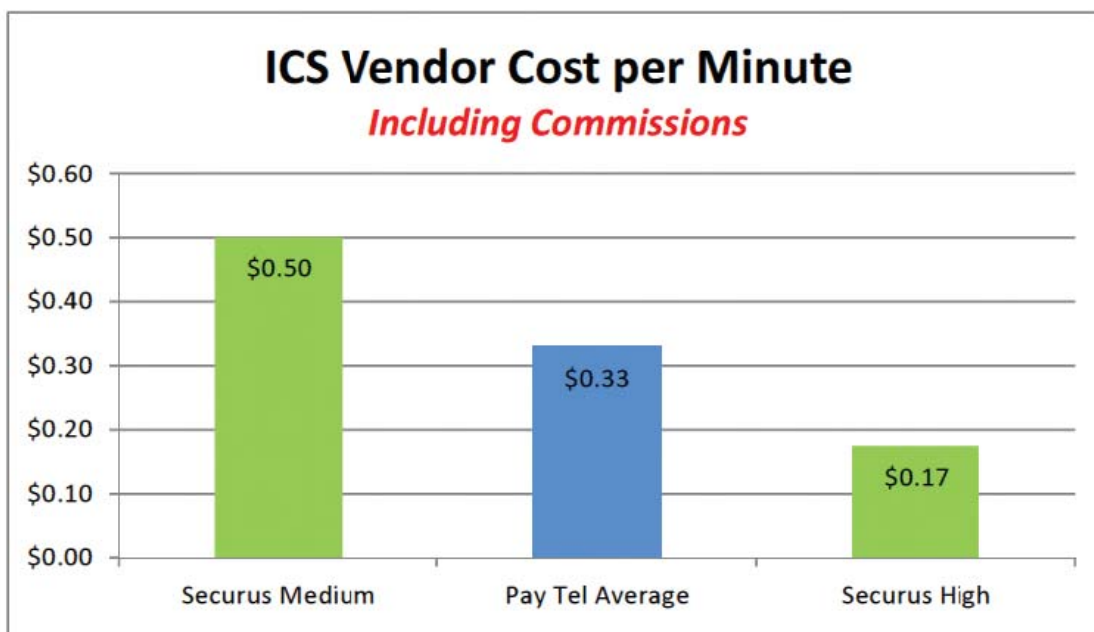
¹⁷ Securus serves eight Department of Corrections accounts which Siwek culled out from the city and county facilities prior to devising the High, Medium, and Low categories. WC Docket No. 12-375, Report of Stephen E. Siwek Report Section 2.3 (Mar. 25, 2013) (filed with Securus Comments).

¹⁸ WC Docket No. 12-375, Further Comments of Pay Tel Communications, Inc. (July 17, 2013) ("Pay Tel Further Comments").

¹⁹ *Id.* at 7.

²⁰ Both Pay Tel's and Securus's respective analyses included site commissions. Mr. Siwek calculated that **75.4%** of costs (average) at the High Volume sites, **67.4%** of costs at Medium Volume sites, and only **18.5%** of costs at Low Volume sites are attributable to site commissions. Siwek Report Table 5.

²¹ Pay Tel Further Comments at 8.



What Pay Tel omitted from this chart is the fact that Securus's average cost per minute at its Low Volume facilities is **\$1.71**.

These tables demonstrate that, in July 2013, Pay Tel showed itself to be similarly situated to – and actually better situated than – Securus with regard to service costs. Pay Tel now has proved with its Petition that the Wright Petitioners' requested rate caps of \$0.20 per minute for debit and \$0.25 per minute for collect are unworkable. That same demonstration proves that the Interim Rate Caps are not workable for Securus, either, nor is it workable for other ICS carriers.

Five ICS carriers, Securus, Global Tel*Link, CenturyLink, Pay Tel, and Telmate, have appealed the *Inmate Rate* Order on the ground that both the "Safe Harbor" rates and the Interim Rate Caps prevent them from recovering their costs of service. Each carrier has provided

the Commission with data, as well as site-specific examples, to support this conclusion.²² If Pay Tel cannot live with the rates derived from its own cost study, Securus should not be forced to comply with Interim Rate Caps that are grossly below the cost figures in the Siwek Report.

But this issue is really about revenue, not costs. The Bureau's analysis focused on the fact that, under the Interim Rate Caps, Pay Tel "cannot meet its total company revenue requirement" due to the "below-average-cost intrastate rates[.]"²³ The Bureau spoke of Pay Tel's projected "shortfall of approximately 11 percent of its total 2012 revenue."²⁴ In this discussion, the Bureau was careful to note that the "cost-based" rate requirement is not in effect:

Pay Tel further requests the Commission either determine that its rates comply with the Commission's rule that ICS rates be cost-based or grant a waiver of such requirement. [cite to Pay Tel Petition] Given the Court of Appeals' stay of this rule pending its resolution of appeals of the Order, the Bureau does not address this request. We further note that Pay Tel neither seeks a waiver of the other rules adopted by the Order, nor of the provisions of the Order generally.²⁵

For these reasons, the *Waiver Order* is predicated on Pay Tel's "revenue shortfall" rather than its costs.²⁶

All ICS carriers are losing a good deal of revenue by cutting their rates down to the Interim Rate Caps. They all face the same intrastate rate caps and rules as Pay Tel. They all will suffer a huge "shortfall". Thus, to the extent that the Bureau wants to grant relief that will

²² Securus referenced and summarized these presentations at Pages 9-11 of its Reply Comments on the FNPRM filed January 13, 2014, in this docket.

²³ *Waiver Order* ¶ 6.

²⁴ *Id.*

²⁵ *Id.* n.29.

²⁶ The Bureau reviewed the cost study submitted with the Pay Tel Petition in order to find the "total company average per minute costs". *Waiver Order* ¶ 6. But the core of the Bureau's analysis remained "the interaction" between the Interim Rate Caps and the "below-average-cost intrastate rates" which creates a "shortfall" in Pay Tel's gross revenue. *Id.*

“permit Pay Tel to remain in business,”²⁷ the Bureau should want the other ICS carriers to remain in business as well – certainly at the city and county jails where costs are difficult to amortize as shown in the Siwek Report.

Not only are these carriers injured by the Interim Rate Caps that are demonstrably unreasonable, but they have significant concerns about the effect of the Pay Tel waiver in this very competitive market. It is axiomatic that permitting Pay Tel to realize almost double the interstate calling revenue of other ICS carriers will provide it with additional funds to develop new services and technology to enhance its competitive position. The other ICS carriers will not have that excess revenue. A significant and lasting loss of good will with correctional facilities could result from an inability to offer what Pay Tel now can offer. The Commission always refrains from “picking winners and losers,”²⁸ and thus should act here to ensure that it has not unjustly given Pay Tel an advantage by making up a “revenue shortfall” that is little different from what other ICS carriers face.

CONCLUSION

For all these reasons, the Bureau should issue an order stating that all ICS providers serving jails in Pay Tel’s 13-state service territory are granted the same relief from the Interim Rate Caps that was granted in the *Waiver Order*. Specifically, all ICS providers should be permitted to charge up to \$0.46 per minute for interstate inmate calls placed from jails.

Securus requires expedited treatment of this petition and respectfully requests the Bureau’s decision by **March 19, 2014**.

²⁷ *Waiver Order* ¶ 17 (quoting Pay Tel Supplemental Filing at 2).

²⁸ *E.g.*, CC Docket No. 98-147, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Fourth Report and Order, 16 FCC Rcd. 15435, 15438 ¶ 7 (2001) (“Indeed, we have previously recognized that, in adopting the 1996 Act, Congress consciously did not try to pick winners or losers, or favor one technology over another.”).

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